

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF MASSACHUSETTS

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JOHN HANCOCK LIFE INSURANCE  
COMPANY,

Plaintiff,

v.

VESTMONT LIMITED PARTNERSHIP,  
VESTMONT LIMITED PARTNERSHIP II,  
VESTMONT LIMITED PARTNERSHIP III,  
and VESTERRA CORPORATION d/b/a  
MONTGOMERY SQUARE PARTNERSHIP,

Defendants.

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CIVIL ACTION NO. 05-11614-WGY

**PLAINTIFF JOHN HANCOCK LIFE INSURANCE COMPANY'S  
MOTION FOR SUMMARY JUDGMENT**

Plaintiff John Hancock Life Insurance Company ("John Hancock" or "Hancock") hereby moves, pursuant to Fed. R. Civ. P. 56, for summary judgment on its breach of contract claim and all of defendants Vestmont Limited Partnership, Vestmont Limited Partnership II, Vestmont Limited Partnership III, and Vesterra Corporation d/b/a Montgomery Square Partnership's (collectively, "Montgomery Partners" or the "Defendants") counterclaims. This is an action in which John Hancock seeks to enforce the unambiguous terms of a \$32 million written loan commitment that Hancock and Montgomery Partners negotiated and entered into in the summer of 2004 (the "Loan Commitment"). As set forth in more detail in John Hancock's accompanying Memorandum of Law, the undisputed facts establish as a matter of law that: (1) Montgomery Partners has breached the Loan Commitment by failing to close the loan or make John Hancock

whole for its resulting losses; (2) the Loan Commitment is not illusory and, therefore, is a valid, enforceable agreement between John Hancock and Montgomery Partners; and (3) John Hancock did not commit fraud or violate M.G.L. c. 93A with respect to the Loan Commitment. Accordingly, John Hancock is entitled to summary judgment on its breach of contract claim, and on all of Montgomery Partners' counterclaims.

In support of this Motion, John Hancock relies upon the previously-filed Affidavits of John P. Ferrie, Timothy J. Malik and Brian A. Davis, as well as the Supplemental Affidavit of Timothy J. Malik, its Statement of Undisputed Facts, and its Memorandum of Law, all of which are filed simultaneously herewith.

**Request for Oral Argument**

John Hancock respectfully requests oral argument on this Motion.

JOHN HANCOCK LIFE INSURANCE  
COMPANY

By its attorneys,

/s/ Brian A. Davis

Brian A. Davis (BBO No. 546462)

Paul D. Popeo (BBO No. 567727)

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Date: March 1, 2006

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**LOCAL RULE 7.1 CERTIFICATION**

Pursuant to Local Rule 7.1(A)(2), the undersigned counsel for the Plaintiff hereby certifies that he has conferred in good faith with counsel for the Defendants concerning the subject matter of this Motion. The parties were not able to resolve or narrow the issues raised therein.

/s/ Brian A. Davis

Brian A. Davis

**CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on March 1, 2006.

/s/ Brian A. Davis

Brian A. Davis